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DENTON G. BURDICK, JR.
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HEARINGS CLERK
EPA REGION X

October 25, 1989

VIA FEDERAL EXPRESS

EPA Regional Hearing Clerk
Suite 1200, M/S SO-125
Park Place Building
1200 Sixth Avenue
Seattle, Washington 98101

Dear Regional Hearing Clerk:

Re: United States Environmental Protection Agency
v. Pacific Wood Treating Corporation
RCRA Docket No. 1089-09-28-3008(a)

Enclosed for filing is Answer To Complaint And
Compliance Order of Pacific Wood Treating Corporation.

Yours very truly,

Scott Howard
Scott Howard

SH/emvb

Enclosure

Cc: John Hamill

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HEARINGS CLERK
EPA-REGION X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF:

United States Environmental Protection Agency,)	RCRA Docket No. 1089-09-28-3008(a)
)	
Complainant,)	ANSWER TO COMPLAINT AND
)	COMPLIANCE ORDER
vs.)	
)	
Pacific Wood Treating Corporation,)	
Ridgefield, Washington,)	
)	
Respondent.)	
)	
EPA ID No. WAD009036906)	
)	

For Answer to the Complaint And Compliance Order of
United States Environmental Protection Agency (hereinafter
"EPA"), Pacific Wood Treating Corporation (hereinafter "PWT")
admits, denies and alleges as follows:

REQUEST FOR HEARING

1. PWT hereby requests a hearing on the Complaint And
Compliance Order.

* * * * *

Page 1 - Answer To Complaint And Compliance Order

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1 for post-closure care or post-closure financial assurance.

2 7. With reference to paragraph 10, EPA now asserts that
3 in addition to the items set forth in the paragraph 6 above that
4 the closure plan was not public noticed as required by 40 CFR,
5 Part 265, Subpart G. In response to this allegation by EPA, PWT
6 has reviewed the Consent Agreement And Final Order entered on
7 November 1, 1986, which Consent Agreement was intended by PWT and
8 by EPA to resolve all outstanding matters as between those two
9 parties at that time and has found no finding of fact or
10 conclusion of law or agreement contained in that Consent
11 Agreement And Final Order, dated November 21, 1986, requiring
12 public notice. It is the position of PWT that if this were a
13 concern of EPA it should have been raised at that time and
14 included in the Consent Agreement And Final Order.

15 8. With reference to paragraph 11, the Complaint And
16 Compliance Order issued on September 20, 1985, by EPA sought a
17 Part B Permit Application from PWT. The Consent Agreement And
18 Final Order issued on November 21, 1986, which represented the
19 agreement of PWT and EPA to all matters then outstanding does not
20 require a Part B Permit Application to be submitted by PWT. If
21 EPA wanted a Part B Permit Application to be submitted, then EPA
22 should have included that as part of the settlement that was
23 reached which was then incorporated in the Consent Agreement And
24 Final Order, dated November 21, 1986. PWT has not violated the
25 Consent Agreement And Final Order with reference to the Part B
26 Permit Application because the Consent Agreement And Final Order

*Agree, but
still subject*

1 does not require PWT to submit such an application.

2 9. With reference to paragraph 12, PWT admits that
3 respondent and EPA entered into a Consent Agreement And Final
4 Order on or about November 21, 1986, in order to satisfy and
5 remedy all of the violations and alleged violations existing at
6 that time as asserted by EPA. This settlement agreement
7 encompassed the initial Complaint And Compliance Order issued to
8 PWT by EPA on September 30, 1985, as well as all other matters
9 presented formally and informally by EPA at that time.

10 11. PWT acknowledges that the Consent Agreement And
11 Final Order provides that a penalty of \$15,000.00 was adjudged
12 but deferred to October 30, 1987, at which time it became due and
13 payable unless the activities described in paragraphs 5 through 7
14 on page 6 of the Consent Agreement And Final Order had been
15 performed. PWT has, in fact, performed the activities described
16 in paragraphs 5 through 7 on page 6 of the Consent Agreement And
17 Final Order. However, EPA has not performed its obligations as
18 contained in paragraph 7 on page 7 of the Consent Agreement And
19 Final Order in that it has not reviewed and approved the new
20 closure plan submitted by PWT despite requests by PWT for EPA to
21 do so. For this reason, the penalty of \$15,000.00 is not due and
22 payable and should be wholly excused pursuant to paragraph 3 on
23 page 6 of the Consent Agreement And Final Order.

24 12. With reference to paragraph 12a, EPA alleges that
25 PWT did not meet the financial assurance requirements of 40 CFR
26 Part 265, Subpart H. PWT did meet the requirements set forth

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1 therein by establishing with Rainier Bank, now known as Security
2 Pacific Bank, on September 15, 1989, a trust fund as is specifi-
3 cally set forth in 40 CFR Part 265, Subpart H. PWT is making
4 deposits to said trust account as is required by 40 CFR
5 §265.145(a)(3). *Shoreline or fully funded*

6 13. With reference to paragraph 12b, PWT did submit to
7 EPA a closure plan and schedule which addressed the installation
8 of a ground water monitoring system in compliance with 40 CFR
9 Part 265, Subpart F. This was done on or about February 22,
10 1987. PWT submits to the EPA its closure plan for Ridgefield
11 Brick & Tile Site, Ridgefield, Washington, dated February 19,
12 1987, and prepared by Hazard Management Specialists. EPA and PWT
13 meet on July 21, 1987. The result of that meeting was that PWT
14 and its consultant believed that EPA was now satisfied with the
15 closure plan previously submitted. EPA does not after that date
16 submit further comments with regard to the closure plan dated
17 February 19, 1987.

18 On or about October 6, 1987, PWT submitted its
19 progress report regarding the geological and hydro site
20 characterization. On January 23, 1989, PWT submits its ground
21 water monitoring report prepared by David J. Newton & Associates
22 with recommendations for modifications to the closure plan.

23 EPA did not respond. PWT has fully complied with
24 the Consent Agreement And Final Order as to the closure plan.

25 RESPONSE TO CONCLUSIONS OF LAW

26 14. With reference to paragraph 13, for the reasons set

1 forth above PWT denies that it has violated the Compliance
2 Agreement And Final Order dated November 21, 1986, which
3 encompassed the requirements of the EPA as they pertain to RCRA
4 Section 3008(c) and 40 CFR §270.10(e)(4).

5 RESPONSE TO PROPOSED PENALTY

6 15. With reference to paragraph 14, it is PWT's position
7 that there is no violation of the Consent Agreement And Final
8 Order and that any penalty is, therefore, inappropriate.

9 RESPONSE TO COMPLIANCE ORDER

10 16. With reference to paragraphs 15 and 16, it is the
11 position of PWT that it has complied with paragraphs 6 and 7 of
12 the Consent Agreement And Final Order and it is, therefore,
13 inappropriate that another Compliance Order be issued.

14 17. With reference to paragraph 17, the matters regard-
15 ing a Part B Permit Application were raised by the September 30,
16 1985, Complaint And Compliance Order. The Consent And Final
17 Order entered on November 21, 1986, indicates on lines 25 and 26
18 of page 1 that the Consent Agreement was in complete settlement
19 of the matters alleged in that Compliance And Compliance Order.
20 Since the matter regarding the Part B Permit Application was
21 raised and was settled as between the parties without a require-
22 ment for a Part B Permit Application to be submitted by PWT to
23 EPA, EPA is not now entitled to such a permit.

24 18. With reference to paragraph 18, the plans, reports
25 and submittals as were required by the Consent Agreement And
26 Final Order dated November 21, 1986, have been submitted by PWT

1 and continue to be submitted by PWT in accordance with that
2 Consent Agreement And Final Order. There are no further reports,
3 plans or submittals that are required.

4 RESPONSE TO NOTICE OF LIABILITY
5 AND RESOLUTION OF THIS PROCEEDING

6 19. With reference to paragraphs 19 and 20, PWT has
7 complied with the Consent Agreement And Final Order dated
8 November 21, 1986. Liability for additional civil penalties for
9 payment of the proposed fines is inappropriate.

10 DATED this 25th day of October, 1989.

11 SCHWAB, HILTON & HOWARD

12
13 By 

14 Scott Howard
15 Attorneys for Respondent
16 Pacific Wood Treating Corporation
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Pacific Wood Treating Corporation,
Ridgefield, Washington,

Respondent.

EPA ID No. WAD009036906

RCRA Docket No. 1089-09-28-3008(a)

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Answer To
Complaint And Compliance Order on the following persons on the
25th day of October, 1989, by forwarding by Federal Express to
each a true copy thereof, certified by me as such, contained in a
sealed envelope, with Federal Express charges prepaid, addressed
to said persons at the last known address of each shown below and
deposited with Federal Express on said day at Portland, Oregon:

EPA Regional Hearing Clerk
Suite 1200, M/S SO-125
Park Place Building
1200 Sixth Avenue
Seattle, Washington 98101

John Hamill
Associate Regional Counsel
Environmental Protection Agency Region 10
1200 Sixth Avenue, SO-125
Seattle, Washington 98101


Of Attorneys for Respondent
Pacific Wood Treating Corporation

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